

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 DEVENDRA RAJ ACHARYA, Individually  
4 and on Behalf of All Others  
5 Similarly Situated,

6 PLAINTIFFS,

7 VS.

8 JIMMY K SOLANKI

9 Defendants.

SECOND AMENDED  
COMPLAINT

JURY TRIAL DEMANDED

CASE NO: 1:18-CV-  
08010-MKV

10  
11 Plaintiff DEVENDRA RAJ ACHARYA ("Plaintiffs"), by  
12 and through their undersigned attorney, brings this  
13 action individually and on behalf of all other similarly  
14 situated current and former employee of Defendant, JIMMY  
15 K SOLANKI, (SOLNANKI and/or the Defendants), alleges as  
16 follows, on behalf of themselves and on behalf of all  
17 other persons similarly situated:  
18  
19  
20

21 **NATURE OF THE ACTION**

22 1. Plaintiff(s) bring this action individually and on  
23 behalf of all other similarly situated current and  
24 former employees, against Defendants.  
25

1 2.Plaintiff are suing defendant(s) for unpaid overtime  
2 compensation under the Fair Labor Standard ACT(FLSA)  
3 and its accompanying regulations and for unpaid  
4 overtime and spread of hours compensation under the New  
5 York Labor Law (NYLL) and its accompanying regulations.  
6

7 3.Defendant(s) have willfully violated the FLSA and NYLL  
8 by employing plaintiffs in a work week longer than  
9 forty (40) hours and in a workday longer than ten (10)  
10 hours without paying them overtime and spread of hours  
11 compensation.  
12

13 4.Plaintiffs bring this action pursuant to 29 USCS §  
14 216(b) to remedy defendants' violation of the overtime  
15 provision of the FLSA, 29 USCS §§ 201, et seq. and  
16 supporting United States Department of Labor  
17 regulations.  
18

19 5.Plaintiffs also bring this action pursuant to NYLL §  
20 663(2) to remedy defendants' violations of the wage,  
21 overtime, spread of hours, failure to give notice  
22 provision of the Labor Law Article 19, §§ 650, et seq  
23  
24  
25

1 and supporting New York State Department of Labor  
2 regulations.

3  
4 6. Plaintiff Acharya also bringing action pursuant to 29  
5 USCS § 215 (a) that defendant discriminated against  
6 him.

7  
8 **THE PARTIES**

9  
10 7. Plaintiffs, and other members of the class, are  
11 individuals residing in the City of New York and State  
12 of New York, who worked for Defendants at their  
13 locations.

14  
15 **Defendant Solanki**

16 8. Upon information and belief, defendant Jimmy K Solanki,  
17 is Franchisee of the defendant 7- Eleven.

18 9. Upon information and belief, defendant Solanki is owner  
19 of subject business.

20  
21 10. Upon information and belief, defendant Solanki is  
22 management of subject business.

23 11. At all relevant times, Defendant(s) have been, and  
24 continue to be, employers engaged in interstate  
25

1 commerce and/or the production of good for commerce  
2 within the meaning of the FLSA, 29 U.S.C. §§ 206(a)  
3 and 207(a).  
4

5 12. Upon information and belief, at all relevant times,  
6 Defendants have had gross revenue in excess of  
7 \$500,000.00.  
8

9 13. Upon information and belief, at all relevant times  
10 herein, Defendants have used goods and materials  
11 produced in interstate commerce, and have employed at  
12 least two individuals who handled such goods and  
13 materials.  
14

15 14. Upon information and belief, the defendant Solanki  
16 is management and/or officer of the defendant's  
17 businesses.  
18

19 15. Upon information and belief, at all relevant times,  
20 defendant(s) has constituted an "enterprise" as defined  
21 in the FLSA.  
22

23 16. Defendants constitute "employer" of Plaintiffs and  
24 the Class as that term is used in the Fair Labor  
25

Standards Act, New York Labor Law, and each of their corresponding regulations.

17. Defendant(s) suffer or permit to work plaintiff.

18. Defendant(s) benefited from when defendant(s) suffer or permit to work plaintiff.

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, as well as supplemental jurisdiction over Plaintiffs' and the Class's state law claims pursuant to 28 U.S.C. §1367. In addition, the Court has jurisdiction over the Plaintiffs' and the Class's claims under the FLSA pursuant to 29 U.S.C. §216(b).

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants transact business in this District.

21. The defendant(s) maintains its principal executive office in the County of New York and State of New York

1 and within the jurisdiction of the Southern District  
2 of New York.

3  
4  
5 **CLASS ACTION ALLEGATIONS**

6 22. Plaintiffs bring a collective action for violations  
7 of the Fair Labor Standards Act and a class action for  
8 violations of the New York Labor Law pursuant to  
9 Federal Rules of Civil Procedure Rule 23.  
10

11 23. The claim is brought on behalf of all regular full-  
12 time hourly employees of Defendant(s) who have been or  
13 will be employed in Defendants' stores located in the  
14 State of New York during the applicable statute of  
15 limitations prior to the date of the commencement of  
16 this action through the date of final disposition of  
17 this action ("the class period"), whom Defendants have  
18 required or permitted to perform work in excess of  
19 forty (40) hours per week without overtime wages.  
20  
21

22 24. Excluded from the Class are Defendants' legal  
23 representatives, officers, directors, assigns, and  
24 successors, or any individual who has, or who at any  
25

1 time during the Class period has had, a controlling  
2 interest in Defendants; the Judge whom this case is  
3 assigned and any member of the Judge's immediate  
4 family; and all persons who will submit timely and  
5 otherwise proper requests for exclusion from the Class.  
6

7 25. The employees in the Class identified above are so  
8 numerous that joinder of all members is impracticable.  
9 Although the precise number of such employees is  
10 unknown, and facts on which the calculation of that  
11 number are presently within the sole control of the  
12 Defendants and can be ascertained through appropriate  
13 discovery.  
14  
15

16 26. Upon information and belief defendants have  
17 substantial numbers of employee which meets requirement  
18 of class action.  
19

20 27. When plaintiffs were working for defendants'  
21 business located at address known as 107 E23rd Street,  
22 City of New York, State of New York and Zip Code of  
23 10010 New York City Location).  
24  
25

1 28. Common questions of law and fact exist as to  
2 Plaintiffs and the Class that predominate over any  
3 questions only affecting them individually and include,  
4 but are not limited, the following:  
5

6 a. Whether Defendants have violated and continue to  
7 violate the Fair Labor Standards Act, 29 U.S.C. §§ 200  
8 et seq., and the supporting United States Department  
9 of Labor regulations, as alleged herein;  
10

11 b. Whether Defendants have violated and continue to  
12 violate New York Labor Law §§ 190 et seq., and 650 et  
13 seq., and the supporting New York State Department of  
14 Labor Regulations, as alleged herein;  
15

16 c. Whether Defendants have failed to compensate Plaintiffs  
17 and the Class for work performed in excess of forty  
18 (40) hours per workweek with overtime wages;  
19

20 d. Whether Defendants have engaged in a pattern, practice  
21 or policy of encouraging Plaintiffs and members of the  
22 Class not to report all time worked;  
23

24 e. Whether Defendants have engaged in a pattern, practice  
25 or policy of deleting hours actually worked by



1 Plaintiffs and members of the Class from records of  
2 their compensable time;

3 f. Whether Defendants have engaged in a pattern, practice  
4 or policy by not providing required wages, hour and  
5 overtime notices to worker;

6 g. Whether Defendants have failed to keep true and  
7 accurate time records for all hours worked by  
8 Plaintiffs and the Class;

9 h. The nature and extent of class-wide injury and the  
10 appropriate measure of damages for the Class.

11 29. The claims of the Plaintiffs are typical of the  
12 claims of the Class he seeks to represent.

13 30. Both the Plaintiffs and the Class work or have worked  
14 for Defendants as full-time hourly employees in its  
15 juice stores in New York State.

16 31. Plaintiffs and the Class were not paid the  
17 statutorily mandated overtime rate of one and one-half  
18 times the regular rate for each hour worked in excess  
19 of forty (40) in a given work week.

32. As a result, Plaintiffs and the Class have not been credited or compensated for work in excess of forty (40) hours per week that they have performed for the benefit of Defendants.

33. Plaintiff and the Class have suffered damages, including lost overtime compensation, resulting from Defendants' wrongful conduct.

34. Defendants had the same practice and procedure to pay wages to other employee who were working with plaintiffs for the defendants.

35. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class.

36. Plaintiffs has retained counsel who has done in identifying or investigating potential claims in this action, who has knowledge of the applicable law, and competent and experienced in complex labor and employment litigation.

**FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

1 37. All the work performed by Plaintiffs and the Class  
2 were assigned by their managers and supervisors.

3 38. Plaintiffs and the Class were suffered and/or  
4 permitted by Defendants to work in excess of forty (40)  
5 hours per week without the rate of compensation  
6 reflective of the statutorily mandated overtime rate  
7 of one and one-half times the regular rate.  
8  
9

10  
11 **Failure to Properly Record Hours Worked and Earnings**

12 39. On each workday, Defendants have scheduled  
13 Plaintiffs and the Class to work in shifts that begin  
14 and end at particular times.  
15

16 40. Because Defendants have failed to record, or has  
17 inaccurately deducted, hours worked by employees',  
18 Plaintiffs and the Class have not been properly  
19 compensated for, work in excess of forty (40) hours per  
20 week performed for the benefit of the Defendants.  
21

22 41. Defendants have not recorded, reported or maintained  
23 records of such work performed for the benefit of  
24  
25

1 Defendants by Plaintiffs and the Class as required by  
2 law.

3  
4  
5 **Widespread, Consistent and Willful Nature of Violations**

6 42. Defendants' unlawful conduct has been widespread,  
7 repeated and consistent.

8 43. Defendants' managers and supervisors have known the  
9 Defendants' employees, including Plaintiffs and the  
10 Class, perform work in excess of forty (40) hours per  
11 week that Defendants do not accurately record, report,  
12 or compensate such employees.  
13

14 44. Managers and supervisors observe the employees and  
15 often direct them in performing improperly compensated  
16 overtime work for the benefit of Defendants.  
17

18 45. Defendants have known that their supervisory and  
19 management personnel permitted or required Plaintiffs  
20 and the Class to perform work for the benefit of  
21 Defendant without properly recording or providing  
22 appropriate overtime compensation for such time spent  
23 working.  
24  
25

1 46. As part of Defendants' regular business practice,  
2 Defendants failed to compensate Plaintiffs and the  
3 Class for the hours worked in excess of forty (40)  
4 hours per week at the statutorily mandated overtime  
5 rate of one and one-half times the regular rate for  
6 each hour over forty (40) per week.  
7

8  
9  
10 **INDIVIDUAL REPRESENTATIVE PLAINTIFFS ALLEGATIONS**

11 **PLAINTIFF ACHARYA**

12 47. Mr. Devendra Raj Acharya was employed by defendants  
13 from July 24, 2015 to June 29, 2017.  
14

15 48. During the course of his employment with defendants  
16 Mr. Acharya was working address known as 107 E 23<sup>rd</sup>  
17 Street, City of New York, State of New York zip code  
18 of 10010.  
19

20 49. Mr. Acharya was generally scheduled to work from  
21 evening 7 PM to morning 7AM.

22 50. Mr. Acharya was scheduled work from 5 days to 7 days  
23 of each working week and 12 hours a day.  
24  
25

1 51. Mr. Acharya was a full-time employee regularly  
2 scheduled to work in excess of forty (40) hours per  
3 week.  
4

5 52. Plaintiff Acharya's overtime was varied, some time  
6 Acharya was scheduled to work 84 hours a week some time  
7 72 hours a week and sometime 60 hours a week. Overtime  
8 varies in weeks.  
9

10 53. Defendant(s) agreed to compensate to Mr. Acharya at  
11 a rate of \$9 for the period July 24 to December 17,  
12 2015, at a rate of \$10 per hour for the period December  
13 18, 2015 to January 19, 2017 and at a rate of \$11 per  
14 hour for the period January 20, 2017 to January 20 to  
15 June 29, 2017.  
16

17 54. Defendant failed to pay minimum or regular wage,  
18 overtime wage spread of hour wages, to plaintiffs.  
19  
20

21 **FIRST CAUSE OF ACTION - FAIR LABOR STANDARDS ACT**

22 **OVERTIME COMPENSATION**

23 55. Plaintiffs, on behalf of themselves and the Class,  
24 repeat, re-allege and incorporate by reference the  
25

1 foregoing allegations as if set forth fully and again  
2 herein.

3 56. Pursuant to 29 USCS § 207 no employer shall employ  
4 any of his employees who in any workweek is engaged in  
5 commerce or in the production of goods for commerce or  
6 is employed in an enterprise engaged in commerce or in  
7 the production of goods for commerce, for a workweek  
8 longer than forty hours unless such employee receives  
9 compensation for his employment in excess of the hours  
10 above specified at a rate not less than one and one-  
11 half times the regular rate at which he is employed.  
12

13 57. At all relevant times, defendants employed  
14 Plaintiffs and the Class within the meaning of the  
15 FLSA.  
16

17 58. At all relevant times, defendants had a policy,  
18 practice and procedure of refusing to pay the  
19 statutorily mandated overtime compensation to their  
20 employees for hours worked in excess of forty (40)  
21 hours per work week.  
22  
23  
24  
25

1 59. As a result of defendants' failure to compensate  
2 their employees, including Plaintiffs and the Class,  
3 at a rate not less than one and one-half times the  
4 regular rate of pay for work performed in excess of  
5 forty (40) hours per workweek, defendants have  
6 violated, and continue to violate, the FLSA, 29 U.S.C.  
7 §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and  
8 215(a).  
9  
10

11 60. The foregoing conduct, as alleged, constitutes a  
12 willful violation of the FLSA within the meaning of 29  
13 U.S.C. §§ 255(a).  
14

15 61. Defendant(s) willfully and intentionally violated  
16 the FLSA's overtime requirement.

17 62. Pursuant to 29 USCS § 216, plaintiff are entitled to  
18 an amount equal to their damages as liquidated damages.  
19

20 63. Due to defendants' FLSA violations, Plaintiffs and  
21 the Class are entitled to recover from defendants their  
22 unpaid overtime compensation to be determine at the  
23 trial, an additional equal amount as liquidated  
24 damages, interest, reasonable attorneys' fees and  
25



1 costs, other compensation and disbursements of this  
2 action, pursuant to 29 U.S.C. § 216(b).

3  
4  
5 **SECOND CAUSE OF ACTION - NEW YORK LABOR LAW OVERTIME**

6 **COMPENSATION**

7 64. Plaintiffs, on behalf of themselves and the Class,  
8 repeat, re-allege and incorporate by reference the  
9 foregoing allegations as if set forth fully and again  
10 herein.

11  
12 65. Pursuant to 12 NYCRR § 142-2.2 employer shall pay an  
13 employee for overtime at a wage rate of one and one-  
14 half times the employee's regular rate for hours worked  
15 in excess of 40 hours.

16  
17 66. At all relevant times, Plaintiffs and the Class were  
18 employed by the defendants within the meaning of the  
19 New York Labor Law, §§ 2, 190, and 651.

20  
21 67. Defendants willfully violated Plaintiffs' and the  
22 Class's rights by failing to pay full overtime  
23 compensation at rates not less than one and one-half  
24 times the regular rate of pay for each hour worked in  
25

1 excess of forty hours per workweek in violation of the  
2 New York Labor Law §§ 190 et seq., and 650 et seq.,  
3 and its supporting regulations in 12 N.Y.C.R.R. § 142.

4  
5 68. Defendant's failure to pay overtime was willful and  
6 lacked a good faith basis, within the meaning of the  
7 New York Labor Law §§ 198, 663 and supporting  
8 regulations.

9  
10 69. Due to defendants' New York Labor Law Violations,  
11 Plaintiffs and the Class are entitled to recover from  
12 defendants, their unpaid overtime compensation,  
13 liquidated damages equal to one hundred percent of the  
14 total amount of the wages found to be due, prejudgment  
15 interest, all reasonable attorney's fees and costs, and  
16 disbursements of the action, pursuant to New York Labor  
17 Law §§ 198 and 663.  
18

19  
20 **THIRD CAUSE OF ACTION – NEW YORK LABOR LAW WAGE THEFT**

21 **PREVENTION ACT**

22 70. Plaintiffs, on behalf of themselves and the Class,  
23 repeat, re-allege and incorporate by reference the  
24  
25

1 foregoing allegations as if set forth fully and again  
2 herein.

3  
4 71. Defendants willfully violated Plaintiffs' and the  
5 Class's rights by failing to provide them with the wage  
6 notices required by the Wage Theft Prevention Act when  
7 Plaintiffs and the Class were hired, or at any time  
8 thereafter.

9  
10 72. Defendants willfully violated Plaintiffs' and the  
11 Class's rights by failing to provide them with proper  
12 notice as required by New York Labor Law § 195 at any  
13 time during their employment.

14  
15 73. New York Labor Law § 195(1) provides, inter alia,  
16 that every employer shall furnish a notice containing  
17 the rate or rates of pay, the regular pay day, name of  
18 employer and employer's contact information as well as  
19 any such other information as deemed material and  
20 necessary by the commissioner of labor of the state of  
21 New York.

22  
23 74. Defendants willfully violated Plaintiffs' and the  
24 Class's rights by failing to provide them with accurate  
25

1 weekly wage statements as required by New York Labor  
2 Law § 195 at any time during their employment.

3 75. New York Labor Law § 195(3) provides, inter alia,  
4 that every employer shall furnish each employee with  
5 every payment of wages, with a statement, listing gross  
6 wages, deductions and net wages, the regularly hourly  
7 rate of pay, as well as the overtime rate of pay, and  
8 upon the request of an employee furnish an explanation  
9 of how such wages were computed.  
10

11 76. Defendant(s) required pursuant to 12 NYCRR § 142-2.6  
12 establish maintain and preserve weekly pay roll  
13 records.  
14

15 77. Defendant(s) required pursuant to 12 NYCRR § 142-2.7  
16 furnish to each employee a statement with every payment  
17 of wages, listing hours, rates paid, gross wages,  
18 allowances, if any, minimum wage, deductions and net  
19 wages.  
20

21 78. Due to defendants' violations of the New York Labor  
22 Law, Plaintiffs and the Class are entitled to recover  
23 from defendants statutory damages of \$50.00 for each  
24  
25

1 work day, up to \$5,000.00 total, defendants' failed to  
2 provide a notice as required by New York Labor Law  
3 §195(1), together with costs and reasonable attorney's  
4 fees.  
5

6 79. Due to defendants' violations of the New York Labor  
7 Law, Plaintiffs and the Class are entitled to recover  
8 from defendants statutory damages of \$250.00 for each  
9 work day, up to \$5,000.00, defendants failed to provide  
10 accurate weekly wage statements as required by New York  
11 Labor Law 195(3), together with costs and reasonable  
12 attorney's fees.  
13  
14

15  
16 **FOURTH CASE OF ACTION**

17 80. Plaintiffs, on behalf of themselves and the Class,  
18 repeat, re-allege and incorporate by reference the  
19 foregoing allegations as if set forth fully and again  
20 herein.  
21

22 81. Defendant(s) is prohibited pursuant 12 NYCRR §  
23 142.2.10 to deduct plaintiff(s) regular wages, overtime  
24 wages except authorized or required by law.  
25

1 Defendant(s) is prohibited to deduction, from  
2 plaintiff's wages, including but not limited to,  
3 deduction for spoilage or breakage; deduction for cash  
4 shortages or losses; or fines, or penalties for  
5 lateness, misconduct.  
6

7 82. Defendant(s) violated 12 NYCRR § 142.2.10.

8  
9 83. Due to defendants' New York Labor Law Violations,  
10 Plaintiffs Acharya is entitled to recover from  
11 defendant(s), reimbursement of unauthorized or  
12 prohibited deduction, his unpaid overtime  
13 compensation, liquidated damages, prejudgment  
14 interest, all reasonable attorney's fees and costs, and  
15 disbursements of the action.  
16  
17

18 **FIFTH CASE OF ACTION - QUANTUM MERUIT (PLED IN THE**  
19  
20 **ALTERNATIVE)**

21 84. Plaintiffs, on behalf of themselves and the Class,  
22 repeat, re-allege and incorporate by reference the  
23 foregoing allegations as if set forth fully and again  
24 herein.  
25

1 85. Plaintiffs and members of the Class have performed  
2 numerous and valuable services at the request and for  
3 the benefit of the Defendants. The reasonable value  
4 of those services for which Plaintiffs and the Class  
5 have not been paid is believed in an amount to be  
6 determined at trial, plus interest, costs and  
7 professional fees.  
8

9  
10 86. Plaintiffs and the Class seek payment from the  
11 Defendants for the reasonable value of services  
12 provided to the Defendants.  
13

14 87. The Defendants have never paid the Plaintiffs at the  
15 correct prevailing overtime wage.

16 88. By reason of the foregoing, the Defendants are liable  
17 to Plaintiffs and the Class in an amount to be  
18 determined at trial, plus interest and professional  
19 fees.  
20  
21  
22  
23  
24  
25

**SIXTH CAUSE OF ACTION**

**Retaliation or discriminatory claim under section 29 USCS**

**§ 215 (a) (3)**

89. Plaintiffs, on behalf of themselves and the Class, repeat, re-allege and incorporate by reference the foregoing allegations as if set forth fully and again herein.

90. Pursuant to USCS § 215 (a) prohibits to defendant in any manner discriminate against the employee because such employee has filed any compliant or instituted or caused to be instituted any proceeding under or related to 29 USCS §§ 201 et esq.,

91. Plaintiff filed this action on September 3<sup>rd</sup> 2018.  
See doc. No. 1.

92. Subsequently, Defendants Jimmy K Solanki contacted plaintiff and threaten plaintiff Acharya by saying either withdraw this action or he will file criminal complaint against plaintiff.



93. Plaintiff did not withdraw this action therefore defendant Solanki filed false criminal complaint against Plaintiff Acharya.

94. Based on Defendant Solanki's complaint, Plaintiff was arrested on or about October 22, 2018.

95. Defendant Solanki created false documents and submitted to New York City Police, and District attorneys of New York County.

96. Charges against plaintiff was dismissed on January 30<sup>th</sup>, 2019 by Hon. Judge N Moyne, Criminal Court of the City of New York, County of New York.

97. Defendants Solanki violated the Fair Labor Standards Act as amended 29 U. S.C. § 215(a)(3).

98. The above said violation was direct result of the plaintiff Acharya's assertion of rights to which he was entitled under said statute.

99. Because of the foregoing prohibited/retaliation act of defendant Solanki plaintiff Acharya suffered, mental injury, financial damages to pay attorney fees, loss

1 of taxi/uber/lyft deriving license which resulted loss  
2 of income.

3 100. Due to defendants' Solanki's foregoing retaliation  
4 act FLSA violations, Plaintiffs is entitled to recover  
5 from defendants such legal or equitable relief as may  
6 be appropriate to effectuate the purpose of section  
7 15(a)(3) (29 USCS § 215(a)(3)) including but not limited  
8 to pain and suffering, mental injury, medical care  
9 cost, payment of wages lost, their unpaid overtime  
10 compensation, an additional equal amount as liquidated  
11 damages, interest, reasonable attorneys' fees and costs  
12 and disbursements of this action, defense cost in that  
13 Queens supreme court personal injury claim.  
14  
15  
16  
17  
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff on behalf of himself and all members  
21 of the proposed Class pray for relief as follows:

22 1. Designation of this action as a collective action on  
23 behalf of the plaintiff(s) DEVENDRA RAJ ACHARYA,  
24 INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY  
25

1 SITUATED, and ordering the prompt issuance of notice  
2 pursuant to 29 USCS § 216(b) to all similarly situated  
3 employee apprising them of the pendency of this action,  
4 permitting them to assert timely FLSA claim in this  
5 action by filing individual consent to sue pursuant to  
6 29 USCS § 216(b);

8 2. Certification of this case as a collective action  
9 pursuant to the Fair Labor Standards Act;

11 3. Designation of Representative Plaintiffs Acharya as  
12 representative of the Class, and their counsel of record  
13 (Bhurtel Law Firm PLLC) as Class Counsel;

15 4. Certification of this action as a class action  
16 pursuant to Fed. R. Civ. P. 23(b)(2) and on behalf of the  
17 members of class, appointing plaintiff Devendra Raj  
18 Acharya and his counsel to represent class member,  
19 ordering appropriate equitable and injunctive relief to  
20 remedy defendants' violation of New York State Law,  
21 including but not necessarily limited to an order  
22 enjoining defendant(s) from continuing its unlawful  
23 practices;  
24  
25

- 1 5. An order tolling the statute of limitations;
- 2 6. An order declaring that the defendants violated the
- 3 Fair Labor Standards Act;
- 4
- 5 7. An order declaring that the defendant(s)' violations
- 6 of the FLSA were willful;
- 7
- 8 8. An award of liquidated and/or punitive damages as
- 9 result of the defendant's willful failure to pay wage
- 10 pursuant to 29 USCS § 216 and the labor law,
- 11
- 12 9. An award of appropriate statutory penalties;
- 13
- 14 10. An award of restitution to be paid by defendants
- 15 according to proof;
- 16
- 17 11. An award of unpaid minimum wages, overtime wages due
- 18 under the FLSA and NYLL;
- 19
- 20 12. An award of liquid damages under FLSA and NYLL;
- 21
- 22 13. An award Plaintiffs and the Class the costs of this
- 23 action incurred herein, including reasonable attorneys'
- 24 fees and expert fees;
- 25
14. An award Plaintiffs and the Class Pre-Judgment and
- Post-Judgment interest, as provided by law;

1 15. An award plaintiff Acharya, sum of loss of  
2 wages/income actual amount to be determined at the trial;

3 16. An award of damages arising out of the illegal  
4 deductions from earned wages,  
5

6 17. An award of liquidated damages as a result of  
7 defendant(s)' willful illegal deductions from earned  
8 wages pursuant to the NYLL;  
9

10 18. An Award of legal or equitable relief as may be  
11 appropriate to effectuate the purpose of section 15(a)(3)  
12 (29 USCS § 215(a)(3) including but not limited to pain and  
13 suffering, mental injury, medical care cost, payment of  
14 wages lost, for plaintiff Acharya other damages as  
15 authorized under law, and  
16

17 19. Grant such other and further legal relief as this  
18 Court deems necessary, just and proper.  
19  
20

21 **DEMAND FOR TRIAL BY JURY**  
22  
23  
24  
25

1 Pursuant to Federal Rules of Civil Procedure Rule 38,  
2 Plaintiffs and the Class demand a trial by jury on all  
3  
4 issues so triable.

5  
6  
7 Dated: Jackson Heights, New York  
8 May 21, 2020

9 

10 Durga P. Bhurtel, Esq.  
11 Attorney for Plaintiffs,  
12 Devendra Raj Acharya,  
13 Individually and on Behalf of  
14 All Others Similarly Situated  
15 37-49 75<sup>th</sup> Street, 2<sup>nd</sup> Floor  
16 Jackson Heights, New York  
17 11372  
18 Tel: (718) 509-6181  
19 Email: deb@attorneybhurtel.com  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Civil Action No: 1:18-CV-08010-MKV

DEVENDRA RAJ ACHARYA, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED

Plaintiffs

V.

JIMMY K SOLANKI

Defendants.

SECOND AMENDED COMPLIANT

**Bhurtel Law Firm PLLC**  
*Attorney for Plaintiff(s)*

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Service of a copy of the within is hereby admitted by Attorney for the defendant on Dated,  
by

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*Attorney(s) for defendants BY:*